SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 235

EARL B. SPURR,

Petitioner,

vs.

STASIA SPURR,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below

No opinion was handed down by the court below. Its decree affirming the decree of the trial court was entered on the 25th day of April, 1945, and will be found on page 48 of the record.

II

Jurisdiction

1. The controversy involves the construction and application of Article 4, Section 1, of the Constitution of the United States.

2. The date of the decree to be reviewed was entered on the 25th day of April, 1945.

3. The case involves a divorce suit in which the Virginia courts failed to give full faith and credit, as required by the Constitution of the United States, to a divorce decree granted by the State of North Carolina.

III

Statement of the Case

Petitioner and Mrs. Stasia Spurr were married in Lynchburg on January 28, 1934. Two children were born to the marriage. In August, 1940, Stasia Spurr filed her bill of complaint against the petitioner in the Circuit Court of the City of Norfolk. Sundry proceedings were had leading to the granting of a divorce *a mensa et thoro* to Stasia Spurr from petitioner, Earl B. Spurr. In Virginia such a divorce leaves the parties husband and wife and merely separates them in their persons and property. No further proceedings were had leading to the granting of an absolute divorce. On November 18, 1942, petitioner, who is an employee of the Bureau of Internal Revenue of the Treasury Department of the United States Government, was sent by the Department to work in North Carolina, and moved his residence to Pelhan., in that State, where he has lived ever since, with no thought of returning to Virginia. After having become domiciled in the State of North Carolina and having lived there for the period of time required by the statutes of North Carolina in order

to give the North Carolina courts jurisdiction, he filed a suit in the Superior Court of Guilford County, North Carolina against his wife for a divorce. The suit was based upon the North Carolina statute which provides "marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for two years, and the plaintiff in the suit for divorce has resided in the State for a period of six months." Chap. 50-6 of the General Statutes of North Carolina. Plaintiff actually resided in the State of North Carolina for a period of twelve months before filing his suit for divorce and still resides there. Stasia Spurr being a non-resident of North Carolina, notice upon her was served in accordance with the North Carolina statutes providing for publication of notice in a newspaper. Chap. 1-588 of the General Statutes of North Carolina. At the February Term, 1944, of the Superior Court of Guilford County, petitioner was granted a divorce on the grounds of the two years separation from his wife, in accordance with the laws of the State of North Carolina. In subsequent proceedings in the case before the Circuit Court of the City of Norfolk, the granting of the divorce to petitioner by the North Carolina court was brought to the attention of the Circuit Court and it was asked to give full faith and credit to the decree. This the Circuit Court of the City of Norfolk refused, holding that the divorce procured by petitioner in North Carolina "is of no force or effect in the State of Virginia, and that the said plaintiff, Stasia Spurr, is still the lawful wife of the said Earl B. Spurr in the State of Virginia." In the meantime, petitioner had intermarried with Ruth Spurr, and had continued to live in the State of North Carolina. The decree of the Circuit Court of the City of Norfolk was affirmed

by the Supreme Court of Appeals of Virginia on the 25th day of April, 1945.

IV

Specification of Error

1. The Supreme Court of Appeals of Virginia erred in affirming the decree of the Circuit Court of the City of Norfolk, holding that the decree of the Superior Court of Guilford County, North Carolina, granting a divorce to your petitioner is of no force or effect in the State of Virginia.

V

Argument

The decree of the Supreme Court of Appeals of Virginia affirming the decree of the Circuit Court of the City of Norfolk involves an important question of constitutional law and is in conflict with the decisions of this court on the subject.

The Supreme Court of Appeals of Virginia, prior to the decree here complained of, decided in *McFarland* v. *McFarland*, 179 Va. 418, 19 S. E. (2d) 77, that the refusal to recognize such a decree of another state as the one here involved does not offend against the full faith and credit clause of the Federal Constitution, unless the suit in which the decree is entered is brought in the state of the matrimonial domicile of the parties against the consort who has left that state and gone to another. Since the decision in *McFarland* v. *MacFarland, supra*, this court has, in *Williams* v. *State of North Carolina*, 317 U. S. 287, 63 Sup. Ct. 209, decided December 21, 1942; *Williams* v. *State of North Carolina* decided May 21, 1945, 65 Sup. Ct. 1092, and *Esenwein* v. *Commonwealth of Pennsylvania*, decided May 21, 1945, 65 Sup. Ct. 1118, decided that full faith and credit must be given such decrees without regard to whether they were

rendered in the state of the matrimonial domicile of the parties or a state other than the matrimonial domicile. More over, these cases have laid down the doctrine unmistakably that full faith and credit must be given such decrees unless they can be impeached for fraud. And whenever it appears that such a decree has been entered in accordance with the laws of the foreign state, it is prima facie valid and must be given effect in every other state excepting in case of fraud, and the burden is upon those who allege fraud to establish it by satisfactory evidence. In the instant case, there is no mention in any of the testimony of any fraud having been practiced upon the court with reference to the question of domicile. The pleadings and the testimony on the subject, including the proceedings in the North Carolina court, show that petitioner moved to North Carolina in good faith and established his domicile there and that he has continued to live there, and is to this date living in North Carolina. It is apparent from a scrutiny of the proceedings that both the trial court and the Supreme Court of Appeals had in mind the doctrine laid down in the *McFarland* case which has been overruled by the two *Williams* cases from North Carolina and the *Pennsylvania* case cited above. The *McFarland* case actually held that a divorce granted in a state other than the state of the matrimonial domicile, to a party migrating to such other state, is not valid if granted upon a ground which would not be recognized in Virginia as a ground for a divorce. Mr. Justice Spratley, speaking for the court, concludes as follows:

> "All of the circumstances and the weight of reason and authority, we think, support our conclusion that the decree of the Superior Court of Currituck County, North Carolina, entered at its July term, 1940, so far as it attempts to substitute the law of North Carolina for that of Virginia, is inoperative and invalid in this State. In Virginia, Mrs. McFarland remains the lawful, wedded wife of James M. McFarland."

Before concluding this supporting brief, we think it proper to avert to the language of the decree of the Supreme Court of Appeals of Virginia to the effect that the court was of opinion that the record was insufficient "because it was not made up and certified in accordance with the requirements of the law of this State." At first glance it might appear that the petition for the appeal was rejected on that ground. However, the decree concludes that the effect of the refusal of the appeal was to affirm the decree of the lower court. The record which was certified contains everything essential to enable the court to pass upon the controlling question. There is no suggestion in any of the decrees or testimony that any fraud was proven in connection with the question of petitioner's domicile. It was conceded that he moved to North Carolina on the date alleged and that he lived there longer than necessary to establish his domicile for purposes of divorce, and that he is still living there. In view of all the circumstances, it is respectfully submitted that "the challenged judgment" will not satisfy the scrutiny of this Honorable court "that the reciprocal duty of respect owed" by the State of Virginia to the State of North Carolina has been properly discharged.

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Honorable Court of its supervisory powers in order that the petitioner may have the benefit of the constitutional provision involved, and that, upon the whole case, the circumstances justify the issuance of the writ in order that the ends of justice may be attained, and that to such an end a writ of certiorari should be granted, and this Honorable Court should review

the decision of the Supreme Court of Appeals of Virginia, and finally reverse it, either in whole or in part.

Respectfully submitted,

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